

AMENDED IN SENATE MAY 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 649**

**Introduced by Assembly Member ~~Floyd~~ Members Machado  
and Strom-Martin**

*(Principal coauthors: Senators Chesbro and Ortiz)*

February 23, 1999

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~~An act to amend Section 220 of the Labor Code, relating to wages of public employees. An act to amend Section 1094.5 of the Code of Civil Procedure, to add Sections 22508.6, 22717.5, and 22801.5 to the Education Code, to amend Sections 18670, 19175, 19582, 19816.20, 19876.5, 20395, 20405.1, 21159, 21160, 21161, 21195, and 22825.01 of, to add Sections 19576.6, 20309.5, and 20407.5 to, and to repeal Section 22754.2 of, the Government Code, and to amend Section 10295 of the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 649, as amended, ~~Floyd Machado~~. ~~State employee pay employees.~~

(1) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan who become employed by any of a list of other public employers to perform service that requires membership in a different public retirement system, may elect to be excluded from

membership in that different system and continue to have their service subject to their existing system.

This bill would make this election available to members of the State Teachers' Retirement System who became employed by the state, during a specified period, to perform service subject to Second Tier benefits in the Public Employees' Retirement System and who satisfy certain requirements. The bill would require persons making that election to make specified contributions to the Teachers' Retirement Fund with respect to their pre-election state service and would also require specified assets to be transferred from the Public Employees' Retirement System to that fund on account of that state service, thereby making an appropriation to the Teachers' Retirement Fund, a continuously appropriated fund.

(2) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan are entitled to service credit at service retirement for accumulated and unused leave of absence for illness or injury, as specified.

This bill would provide that members who are eligible state employees and who retire on or after January 1, 2000, shall receive, subject to the terms of a memorandum of understanding or the authorization of the Department of Personnel Administration, service credit at service retirement for accumulated unused leave of absence for education, as specified.

(3) Existing law includes procedures for disciplining state employees, including State Personnel Board investigations and hearings, the review of administrative decisions, and suspensions.

This bill would provide that certain of these procedures do not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. The bill would require the state employer, if the collective bargaining agreement has expired and an answer has been filed, to follow the appeal procedures contained in the expired memorandum of understanding for

state employees in State Bargaining Unit 11 until a successor agreement is negotiated.

(4) Existing law, the Public Employees' Retirement Law, establishes the Public Employees' Retirement System, and sets forth the provisions for its administration and the delivery of benefits to its members. Member contributions to the Public Employees' Retirement System are deposited into the Public Employees' Retirement Fund, which is a continuously appropriated fund. Existing law includes in the state safety membership category state employees in state bargaining units that have agreed in a memorandum of understanding between the state employer and the recognized employee organization that the classifications or positions of these state employees are found to meet specified state safety membership criteria, if the Department of Personnel Administration has agreed to their inclusion. Existing law excludes from the state peace officer/firefighter membership category security officers employed by the Department of Justice.

This bill would include state employees excluded from the Ralph C. Dills Act and officers or employees of the executive branch of state government who are not members of the civil service within the classification of state safety members, if the department has approved their inclusion, and would delete the exclusion of security officers employed by the Department of Justice from the classification of state peace officer/firefighter members. To the extent the bill would enlarge the class of persons eligible for state safety or state peace officer/firefighter membership, it would make an appropriation by increasing the amount of contributions to the Public Employees' Retirement Fund.

(5) Existing law establishes the Rural Health Care Equity Trust Fund, which is administered by the Department of Personnel Administration to provide subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas on or after January 1, 2000. The fund ceases to be operative on January 1, 2005, or earlier, as specified. Existing law requires each fund in the State Treasury to reimburse the General Fund for specified contributions to the Rural Health

Care Equity Trust Fund for the employees and annuitants paid from each fund.

This bill would change references to the fund to the Rural Health Care Equity Program and specify the means by which the General Fund reimbursements are to be made.

(6) Existing law, the Public Employees' Retirement Law, provides increased industrial disability retirement benefits for certain state membership categories who are incapacitated for the performance of their present duties as a result of injury or illness arising out of and in the course of their employment on or after January 1, 1993.

This bill would provide that these provisions do not apply to a job-related or job-incurred illness or injury that occurs on or after January 1, 2000. The bill would declare the intent of the Legislature that these provisions be given retroactive effect to January 1, 2000.

(7) Under the Public Employees' Retirement Law, specified officers and employees of the State Department of Mental Health are classified as state safety members, however, those members have the option to irrevocably elect, within a specified time period, to remain subject to the miscellaneous membership classification.

This bill would provide that a specified group of those officers and employees who elected to remain subject to the miscellaneous membership classification shall have the right to elect to become safety members, as specified.

(8) Existing law, the Public Employees' Medical and Hospital Care Act, provides health benefits plan coverage to public employees and annuitants meeting the eligibility requirements prescribed by the Board of Administration of the Public Employees' Retirement System.

This bill would revise the definition of "eligible employees" for the purposes of the act to delete a definition applicable only to state employees in State Bargaining Unit 19.

(9) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, including equipment, supplies, textbooks, and repair or maintenance, are void unless approved by the Department of General Services. Contracts entered into by the Department of Personnel

*Administration for employee benefits, occupational health and safety, training services, or any combination thereof, for state employees in state bargaining units that have agreed to this exemption in a memorandum of understanding are exempt from this approval requirement.*

*This bill would revise this provision to make it applicable to all contracts, with specified exceptions, entered into by any state agency for the acquisition of goods and services. The bill would expand the exemption for contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, training services, and any combination thereof, for state employees, as specified.*

*(10) This bill would appropriate \$65,414,288 from the General Fund and unallocated special funds, in specified amounts, for allocation for various state employee benefits or programs, including state employee compensation, the Work and Family Fund, and the Rural Area Health Subsidy Program.*

*(11) This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law prescribes requirements respecting employer payment of wages, including overtime compensation, that are applicable to all employers, other than the state, counties, cities, and other municipal corporations. These provisions of existing law also prescribe penalties for violation, make certain violations misdemeanors, and provide for enforcement by the Division of Labor Law Enforcement of the Department of Industrial Relations and by district attorneys and city prosecutors, as specified.~~

~~This bill would expressly provide that wages earned by employees of state agencies for labor performed in excess of the normal work period shall be paid within the time specified by existing law that requires payment to be made no later than the payday for the next regular payroll period except as otherwise provided in an applicable collective bargaining agreement.~~

~~This bill would require the Division of Labor Standards Enforcement to investigate complaints alleging state agency violations of the bill, would require a state agency determined to be in violation by the Labor Commissioner, after a hearing,~~

~~to pay the claimant's wage claim within 10 days, and would make the state liable for a penalty of treble the damages accruing to the claimant as a direct and foreseeable consequence of any failure to pay when ordered by the Labor Commissioner.~~

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 220 of the Labor Code is~~  
2     ~~amended to read:~~

3     ~~220. (a) Except as provided by subdivision (b),~~  
4     ~~nothing in Sections 200 to 211, inclusive, and Sections 215~~  
5     ~~to 219, inclusive, applies to the payment of wages of~~  
6     ~~employees directly employed by the state or by any~~  
7     ~~county, city, or other local governmental entity. All other~~  
8     ~~employments are, for purposes of these sections, private~~  
9     ~~employments and subject to the provisions thereof.~~

10    ~~(b) Notwithstanding any other provision of law, wages~~  
11    ~~earned by employees of any agency of state government~~  
12    ~~for labor performed in excess of the normal work period~~  
13    ~~shall be paid within the time specified therefor by Section~~  
14    ~~204. The Division of Labor Standards Enforcement shall~~  
15    ~~investigate any complaint alleging a state agency's failure~~  
16    ~~to make timely payment of overtime wages in accordance~~  
17    ~~with this subdivision, and Section 206 shall be applicable~~  
18    ~~to disputes concerning overtime wages of state~~  
19    ~~employees.~~

20    ~~SECTION 1. Section 1094.5 of the Code of Civil~~  
21    ~~Procedure is amended to read:~~

22    ~~1094.5. (a) Where the writ is issued for the purpose~~  
23    ~~of inquiring into the validity of any final administrative~~  
24    ~~order or decision made as the result of a proceeding in~~  
25    ~~which by law a hearing is required to be given, evidence~~  
26    ~~is required to be taken, and discretion in the~~  
27    ~~determination of facts is vested in the inferior tribunal,~~  
28    ~~corporation, board, or officer, the case shall be heard by~~  
29    ~~the court sitting without a jury. All or part of the record~~  
30    ~~of the proceedings before the inferior tribunal,~~

1 corporation, board, or officer may be filed with the  
2 petition, may be filed with respondent's points and  
3 authorities, or may be ordered to be filed by the court.  
4 Except when otherwise prescribed by statute, the cost of  
5 preparing the record shall be borne by the petitioner.  
6 Where the petitioner has proceeded pursuant to Section  
7 68511.3 of the Government Code and the Rules of Court  
8 implementing that section and where the transcript is  
9 necessary to a proper review of the administrative  
10 proceedings, the cost of preparing the transcript shall be  
11 borne by the respondent. Where the party seeking the  
12 writ has proceeded pursuant to Section 1088.5, the  
13 administrative record shall be filed as expeditiously as  
14 possible, and may be filed with the petition, or by the  
15 respondent after payment of the costs by the petitioner,  
16 where required, or as otherwise directed by the court. If  
17 the expense of preparing all or any part of the record has  
18 been borne by the prevailing party, the expense shall be  
19 taxable as costs.

20 (b) The inquiry in such a case shall extend to the  
21 questions whether the respondent has proceeded  
22 without, or in excess of jurisdiction; whether there was a  
23 fair trial; and whether there was any prejudicial abuse of  
24 discretion. Abuse of discretion is established if the  
25 respondent has not proceeded in the manner required by  
26 law, the order or decision is not supported by the findings,  
27 or the findings are not supported by the evidence.

28 (c) Where it is claimed that the findings are not  
29 supported by the evidence, in cases in which the court is  
30 authorized by law to exercise its independent judgment  
31 on the evidence, abuse of discretion is established if the  
32 court determines that the findings are not supported by  
33 the weight of the evidence. In all other cases, abuse of  
34 discretion is established if the court determines that the  
35 findings are not supported by substantial evidence in the  
36 light of the whole record.

37 (d) Notwithstanding subdivision (c), in cases arising  
38 from private hospital boards or boards of directors of  
39 districts organized pursuant to The Local Hospital  
40 District Law, Division 23 (commencing with Section



1 32000) of the Health and Safety Code or governing bodies  
2 of municipal hospitals formed pursuant to Article 7  
3 (commencing with Section 37600) or Article 8  
4 (commencing with Section 37650) of Chapter 5 of  
5 Division 3 of Title 4 of the Government Code, abuse of  
6 discretion is established if the court determines that the  
7 findings are not supported by substantial evidence in the  
8 light of the whole record. However, in all cases in which  
9 the petition alleges discriminatory actions prohibited by  
10 Section 1316 of the Health and Safety Code, and the  
11 plaintiff makes a preliminary showing of substantial  
12 evidence in support of that allegation, the court shall  
13 exercise its independent judgment on the evidence and  
14 abuse of discretion shall be established if the court  
15 determines that the findings are not supported by the  
16 weight of the evidence.

17 (e) Where the court finds that there is relevant  
18 evidence that, in the exercise of reasonable diligence,  
19 could not have been produced or that was improperly  
20 excluded at the hearing before respondent, it may enter  
21 judgment as provided in subdivision (f) remanding the  
22 case to be reconsidered in the light of that evidence; or,  
23 in cases in which the court is authorized by law to exercise  
24 its independent judgment on the evidence, the court may  
25 admit the evidence at the hearing on the writ without  
26 remanding the case.

27 (f) The court shall enter judgment either  
28 commanding respondent to set aside the order or  
29 decision, or denying the writ. Where the judgment  
30 commands that the order or decision be set aside, it may  
31 order the reconsideration of the case in the light of the  
32 court's opinion and judgment and may order respondent  
33 to take such further action as is specially enjoined upon  
34 it by law, but the judgment shall not limit or control in any  
35 way the discretion legally vested in the respondent.

36 (g) Except as provided in subdivision (h), the court in  
37 which proceedings under this section are instituted may  
38 stay the operation of the administrative order or decision  
39 pending the judgment of the court, or until the filing of  
40 a notice of appeal from the judgment or until the





1 expiration of the time for filing the notice, whichever  
2 occurs first. However, no such stay shall be imposed or  
3 continued if the court is satisfied that it is against the  
4 public interest. The application for the stay shall be  
5 accompanied by proof of service of a copy of the  
6 application on the respondent. Service shall be made in  
7 the manner provided by Title 5 (commencing with  
8 Section 405) of Part 2 or Chapter 5 (commencing with  
9 Section 1010) of Title 14 of Part 2. If an appeal is taken  
10 from a denial of the writ, the order or decision of the  
11 agency shall not be stayed except upon the order of the  
12 court to which the appeal is taken. However, in cases  
13 where a stay is in effect at the time of filing the notice of  
14 appeal, the stay shall be continued by operation of law for  
15 a period of 20 days from the filing of the notice. If an  
16 appeal is taken from the granting of the writ, the order  
17 or decision of the agency is stayed pending the  
18 determination of the appeal unless the court to which the  
19 appeal is taken shall otherwise order. Where any final  
20 administrative order or decision is the subject of  
21 proceedings under this section, if the petition shall have  
22 been filed while the penalty imposed is in full force and  
23 effect, the determination shall not be considered to have  
24 become moot in cases where the penalty imposed by the  
25 administrative agency has been completed or complied  
26 with during the pendency of the proceedings.

27 (h) (1) The court in which proceedings under this  
28 section are instituted may stay the operation of the  
29 administrative order or decision of any licensed hospital  
30 or any state agency made after a hearing required by  
31 statute to be conducted under the Administrative  
32 Procedure Act, as set forth in Chapter 5 (commencing  
33 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
34 Government Code, conducted by the agency itself or an  
35 administrative law judge on the staff of the Office of  
36 Administrative Hearings pending the judgment of the  
37 court, or until the filing of a notice of appeal from the  
38 judgment or until the expiration of the time for filing the  
39 notice, whichever occurs first. However, the stay shall not  
40 be imposed or continued unless the court is satisfied that

1 the public interest will not suffer and that the licensed  
2 hospital or agency is unlikely to prevail ultimately on the  
3 merits. The application for the stay shall be accompanied  
4 by proof of service of a copy of the application on the  
5 respondent. Service shall be made in the manner  
6 provided by Title 5 (commencing with Section 405) of  
7 Part 2 or Chapter 5 (commencing with Section 1010) of  
8 Title 14 of Part 2.

9 (2) The standard set forth in this subdivision for  
10 obtaining a stay shall apply to any administrative order or  
11 decision of an agency that issues licenses pursuant to  
12 Division 2 (commencing with Section 500) of the  
13 Business and Professions Code or pursuant to the  
14 Osteopathic Initiative Act or the Chiropractic Initiative  
15 Act. With respect to orders or decisions of other state  
16 agencies, the standard in this subdivision shall apply only  
17 when the agency has adopted the proposed decision of  
18 the administrative law judge in its entirety or has adopted  
19 the proposed decision but reduced the proposed penalty  
20 pursuant to subdivision (b) of Section 11517 of the  
21 Government Code; otherwise the standard in subdivision  
22 (g) shall apply.

23 (3) If an appeal is taken from a denial of the writ, the  
24 order or decision of the hospital or agency shall not be  
25 stayed except upon the order of the court to which the  
26 appeal is taken. However, in cases where a stay is in effect  
27 at the time of filing the notice of appeal, the stay shall be  
28 continued by operation of law for a period of 20 days from  
29 the filing of the notice. If an appeal is taken from the  
30 granting of the writ, the order or decision of the hospital  
31 or agency is stayed pending the determination of the  
32 appeal unless the court to which the appeal is taken shall  
33 otherwise order. Where any final administrative order or  
34 decision is the subject of proceedings under this section,  
35 if the petition shall have been filed while the penalty  
36 imposed is in full force and effect, the determination shall  
37 not be considered to have become moot in cases where  
38 the penalty imposed by the administrative agency has  
39 been completed or complied with during the pendency  
40 of the proceedings.



(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 or 19576.5 of the Government Code.

*(k) This section shall not apply to state employees in State Bargaining Unit 11 disciplined or rejected on probation for positive drug test results who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.*

SEC. 2. Section 22508.6 is added to the Education Code, to read:

22508.6. (a) Any person who is a member of the Defined Benefit Program and who subsequently became employed and continues to be employed by the state to perform service that requires membership in the Public Employees' Retirement System and who meets the requirements of subdivision (b) may elect to have that state service subject to coverage by the Defined Benefit Program and excluded from coverage by the Public Employees' Retirement System.

(b) (1) Only a person who has achieved program vesting shall be eligible to make the election under this section.

(2) A person is eligible to make the election if he or she left employment with a school district, county superintendent of schools, or community college district and began employment with the state within 30 days without any intervening employment and that change in employment occurred on or after July 1, 1991, and prior to the effective date of this section.

(3) A person is eligible to make the election if, at the time of the election, he or she is a member of the Public

1 *Employees' Retirement System subject to Second Tier*  
2 *benefits and is one of the following:*

3 *(A) Represented by a State Bargaining Unit that has*  
4 *agreed by a memorandum of understanding to become*  
5 *subject to Section 20309.5 of the Government Code.*

6 *(B) Excluded from the definition of "state employee"*  
7 *in subdivision (c) of Section 3515 of the Government*  
8 *Code, but performing, supervising, or managing work*  
9 *similar to work performed by employees described in*  
10 *subparagraph (A).*

11 *(C) In a position not covered by civil service and in the*  
12 *executive branch of government, but performing,*  
13 *supervising, or managing work similar to work performed*  
14 *by employees described in subparagraph (A).*

15 *(c) The election under this section shall be made in*  
16 *writing to each system within 90 days after the effective*  
17 *date of this section or within 60 days after the eligible*  
18 *member is notified by the system of his or her right to*  
19 *make the election, whichever is later. The member's*  
20 *election shall be effective on the day following the date*  
21 *on which the election is received by the Public*  
22 *Employees' Retirement System.*

23 *(d) If the election is made, the state service performed*  
24 *from and after the date of the election shall be considered*  
25 *creditable service for purposes of this part and the*  
26 *provisions of Section 22801.5 shall be applicable with*  
27 *respect to service performed prior to that date.*

28 *SEC. 3. Section 22717.5 is added to the Education*  
29 *Code, to read:*

30 *22717.5. (a) A member shall be credited at service*  
31 *retirement for each day of accumulated and unused leave*  
32 *of absence for education for which full salary is allowed*  
33 *on the member's final day of employment with the state.*

34 *(b) The amount of service credit to be granted shall be*  
35 *0.004 year of service for each unused day of educational*  
36 *leave credit.*

37 *(c) When the member has made application for*  
38 *service retirement under this part, the employer shall*  
39 *certify to the board, within 30 days following the effective*  
40 *date of the member's service retirement, the number of*

1 days of accumulated and unused leave of absence for  
2 education that the member was entitled to on the final  
3 day of employment. The board may assess a penalty on  
4 delinquent reports.

5 (d) This section shall apply to eligible state employees  
6 in state bargaining units that have agreed to this section  
7 in a memorandum of understanding, or as authorized by  
8 the Director of the Department of Personnel  
9 Administration for classifications of state employees that  
10 are excluded from the definition of "state employee" by  
11 paragraph (c) of Section 3513 of the Government Code.

12 (e) The provisions of this section shall be effective for  
13 eligible members who retire directly from state  
14 employment on or after January 1, 2000.

15 SEC. 4. Section 22801.5 is added to the Education  
16 Code, to read:

17 22801.5. (a) A member who elects pursuant to  
18 Section 22508.6 to have his or her state service subject to  
19 coverage by the Defined Benefit Program shall receive  
20 additional service credit for the time spent subject to  
21 coverage by the Public Employees' Retirement System  
22 between July 1, 1991, and the effective date of the  
23 election.

24 (b) A member described in subdivision (a) shall pay  
25 all contributions with respect to his or her state service as  
26 a member of the Public Employees' Retirement System  
27 at the contribution rate for additional service credit,  
28 adopted by the board as a plan amendment, in effect at  
29 the time of the election. Contributions shall be made in  
30 a lump sum, or in not more than 120 monthly installments.  
31 Payment shall be made or shall commence within 120  
32 days after the date of the election. No installment, except  
33 the final installment, shall be less than twenty-five dollars  
34 (\$25). The member shall not be credited with any service  
35 pursuant to this section until the contributions have been  
36 paid in full.

37 (c) If the member is employed to perform creditable  
38 service at the time of the election, the contributions shall  
39 be based upon the compensation earnable in the current

1 school year or either of the two immediately preceding  
2 school years, whichever is highest.

3 (d) If the member is not employed to perform  
4 creditable service at the time of the election, the  
5 contributions shall be based upon the compensation  
6 earnable in the last school year of credited service or  
7 either of the two immediately preceding school years,  
8 whichever is highest.

9 (e) The total amount of contributions due from the  
10 member under subdivision (b) shall be reduced by the  
11 amount received from the Public Employees'  
12 Retirement System pursuant to Section 20309.5 of the  
13 Government Code. Under no circumstances shall the  
14 assets received from the Public Employees' Retirement  
15 System, pursuant to that section, be allocated or awarded  
16 to individual members or their spouses or beneficiaries.

17 SEC. 5. Section 18670 of the Government Code is  
18 amended to read:

19 18670. (a) The board may hold hearings and make  
20 investigations concerning all matters relating to the  
21 enforcement and effect of this part and rules prescribed  
22 ~~hereunder~~ under this part. It may inspect any state  
23 institution, office, or other place of employment affected  
24 by this part to ascertain whether this part and the board  
25 rules are obeyed.

26 The board shall make investigations and hold hearings  
27 at the direction of the Governor or the Legislature or  
28 upon the petition of an employee or a citizen concerning  
29 the enforcement and effect of this part and to enforce the  
30 observance of Article VII of the Constitution and of this  
31 part and the rules made under this part.

32 (b) Effective January 1, 1996, this subdivision shall  
33 apply only to state employees in State Bargaining Unit 5.  
34 For purposes of subdivision (a), any discipline, as defined  
35 by Section 19576.1, is not subject to either a board  
36 investigation or hearing. Board review shall be limited to  
37 acceptance or rejection of discipline imposed pursuant to  
38 Section 19576.1.

39 (c) This subdivision shall apply only to state employees  
40 in State Bargaining Unit 8. For the purposes of subdivision



(a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

*(d) This subdivision shall apply only to state employees in State Bargaining Unit 11 who have been disciplined or rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. For purposes of subdivision (a) and in the context of positive drug test results, any discipline, as defined by the memorandum of understanding, and rejections on probation are not subject to either a board investigation or a hearing.*

SEC. 6. Section 19175 of the Government Code is amended to read:

19175. The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the board may do any of the following:

(a) Affirm the action of the appointing power.

(b) Modify the action of the appointing power.

(c) Restore the name of the rejected probationer to the employment list for certification to any position within the class; provided, that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power ~~thereof~~ *of that agency*.

(d) Restore him or her to the position from which he or she was rejected, but this shall be done only if the board determines, after hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At any such hearing the rejected probationer shall have the burden of proof; ~~subject~~. *Subject* to rebuttal by ~~him or her~~ *the rejected probationer*, it shall be presumed that the rejection was free from fraud and bad faith and that the statement of reasons therefor in the notice of rejection is true.



1 (e) Effective January 1, 1996, this section shall not  
2 apply to state employees in State Bargaining Unit 5.

3 (f) *Except as provided in subdivision (g), this section*  
4 *shall not apply to state employees in State Bargaining*  
5 *Unit 11 who have been rejected on probation for positive*  
6 *drug test results and who expressly waive appeal to the*  
7 *State Personnel Board and invoke arbitration*  
8 *proceedings pursuant to a collective bargaining*  
9 *agreement.*

10 (g) *Whenever a written request is made under this*  
11 *section by a probationer in State Bargaining Unit 11 who*  
12 *has been rejected for positive drug test results and the*  
13 *memorandum of understanding for employees in State*  
14 *Bargaining Unit 11 has expired, the state employer shall*  
15 *follow the appeal procedures contained in the expired*  
16 *memorandum of understanding for state employees in*  
17 *State Bargaining Unit 11 until a successor agreement is*  
18 *negotiated between the Department of Personnel*  
19 *Administration and the exclusive representative.*

20 SEC. 7. Section 19576.6 is added to the Government  
21 Code, to read:

22 19576.6. This section shall apply only to state  
23 employees in State Bargaining Unit 11 who have been  
24 disciplined for positive drug test results and who  
25 expressly waive appeal to the State Personnel Board and  
26 invoke arbitration proceedings pursuant to a collective  
27 bargaining agreement.

28 (a) Notwithstanding Section 19576, the State  
29 Personnel Board shall not have the authority stated in  
30 subdivision (a) of that section.

31 (b) *Whenever an answer is filed by an employee and*  
32 *the memorandum of understanding for employees in*  
33 *State Bargaining Unit 11 has expired, the state employer*  
34 *shall follow the appeal procedures contained in the*  
35 *expired memorandum of understanding for state*  
36 *employees in State Bargaining Unit 11 until a successor*  
37 *agreement is negotiated between the Department of*  
38 *Personnel Administration and the exclusive*  
39 *representative.*

1 (c) Notwithstanding any other law or rule, if the  
2 provisions of this section are in conflict with the  
3 provisions of the memorandum of understanding  
4 reached pursuant to Section 3517.5, the memorandum of  
5 understanding shall be controlling without further  
6 legislative action, except that if the provisions of the  
7 memorandum of understanding require the expenditure  
8 of funds, the provisions shall not become effective unless  
9 approved by the Legislature in the annual Budget Act.

10 SEC. 8. Section 19582 of the Government Code is  
11 amended to read:

12 19582. (a) Hearings may be held by the board, or by  
13 any authorized representative, but the board shall render  
14 the decision that in its judgment is just and proper.

15 During a hearing, after the appointing authority has  
16 completed the opening statement or the presentation of  
17 evidence, the employee, without waiving his or her right  
18 to offer evidence in the event the motion is not granted,  
19 may move for a dismissal of the charges.

20 If it appears that the evidence presented supports the  
21 granting of the motion as to some but not all of the issues  
22 involved in the action, the board or the authorized  
23 representative shall grant the motion as to those issues  
24 and the action shall proceed as to the issues remaining.  
25 Despite the granting of the motion, no judgment shall be  
26 entered prior to a final determination of the action on the  
27 remaining issues, and shall be subject to final review and  
28 approval by the board.

29 (b) If a contested case is heard by an authorized  
30 representative, he or she shall prepare a proposed  
31 decision in a form that may be adopted as the decision in  
32 the case. A copy of the proposed decision shall be filed by  
33 the board as a public record and furnished to each party  
34 within 10 days after the proposed decision is filed with the  
35 board. The board itself may adopt the proposed decision  
36 in its entirety, may remand the proposed decision, or may  
37 reduce the adverse action set forth therein and adopt the  
38 balance of the proposed decision.

39 (c) If the proposed decision is not remanded or  
40 adopted as provided in subdivision (b), each party shall

1 be notified of the action, and the board itself may decide  
2 the case upon the record, including the transcript, with  
3 or without taking any additional evidence, or may refer  
4 the case to the same or another authorized representative  
5 to take additional evidence. If the case is so assigned to an  
6 authorized representative, he or she shall prepare a  
7 proposed decision as provided in subdivision (b) upon  
8 the additional evidence and the transcript and other  
9 papers that are part of the record of the prior hearing. A  
10 copy of the proposed decision shall be furnished to each  
11 party. The board itself shall decide no case provided for  
12 in this subdivision without affording the parties the  
13 opportunity to present oral and written argument before  
14 the board itself. If additional oral evidence is introduced  
15 before the board itself, no board member may vote unless  
16 he or she heard the additional oral evidence.

17 (d) In arriving at a decision or a proposed decision, the  
18 board or its authorized representative may consider any  
19 prior suspension or suspensions of the appellant by  
20 authority of any appointing power, or any prior  
21 proceedings under this article.

22 (e) The decision shall be in writing and contain  
23 findings of fact and the adverse action, if any. The findings  
24 may be stated in the language of the pleadings or by  
25 reference thereto. Copies of the decision shall be served  
26 on the parties personally or by mail.

27 (f) This section shall not apply to minor discipline, as  
28 defined in a memorandum of understanding or by  
29 Section 19576.5, for state employees in State Bargaining  
30 Unit 8.

31 (g) *This section shall not apply to state employees in*  
32 *State Bargaining Unit 11 who have been disciplined for*  
33 *positive drug test results and who expressly waive appeal*  
34 *to the State Personnel Board and invoke arbitration*  
35 *proceedings pursuant to a collective bargaining*  
36 *agreement.*

37 SEC. 9. *Section 19816.20 of the Government Code is*  
38 *amended to read:*

39 19816.20. Notwithstanding Section 18717, this section  
40 shall apply to state employees in state bargaining units

1 that have agreed to these provisions in a memorandum  
2 of understanding between the state employer and the  
3 recognized employee organization, as defined in Section  
4 3513, *state employees who are excluded from the*  
5 *definition of "state employee" in paragraph (c) of Section*  
6 *3513, and officers or employees of the executive branch*  
7 *of state government who are not members of the civil*  
8 *service.*

9 (a) The department shall determine which classes or  
10 positions meet the elements of the criteria for the state  
11 safety category of membership in the Public Employees'  
12 Retirement System. An employee organization or  
13 employing agency requesting a determination from the  
14 department shall provide the department with  
15 information and written argument supporting the  
16 request.

17 (b) The department may use the determination  
18 findings in subsequent negotiations with the exclusive  
19 representatives.

20 (c) The department shall not approve safety  
21 membership for any class or position that has not been  
22 determined to meet all of the following criteria:

23 (1) In addition to the defined scope of duties assigned  
24 to the class or position, the member's ongoing  
25 responsibility includes:

26 (A) The protection and safeguarding of the public and  
27 of property.

28 (B) The control or supervision of, or a regular,  
29 substantial contact with one of the following:

30 (i) Inmates or youthful offenders in adult or youth  
31 correctional facilities.

32 (ii) Patients in state mental facilities that house Penal  
33 Code offenders.

34 (iii) Clients charged with a felony who are in a locked  
35 and controlled treatment facility of a developmental  
36 center.

37 (2) The conditions of employment require that the  
38 member be capable of responding to emergency  
39 situations and provide a level of service to the public such

1 that the safety of the public and of property is not  
2 jeopardized.

3 (d) For classes or positions that are found to meet this  
4 criteria, the department may agree to provide safety  
5 membership by a memorandum of understanding  
6 reached pursuant to Section 3517.5 if the affected  
7 employees are subject to collective bargaining, *or by*  
8 *departmental approval for state employees who are*  
9 *either excluded from the definition of "state employee"*  
10 *in subdivision (c) of Section 3513 or are officers or*  
11 *employees of the executive branch of state government*  
12 *who are not members of the civil service. The*  
13 department shall notify the retirement system of its  
14 determination, as prescribed in Section 20405.1.

15 (e) The department shall provide the Legislature an  
16 annual report that lists the classes or positions which were  
17 found to be eligible for safety membership under this  
18 section.

19 *SEC. 10. Section 19876.5 of the Government Code is*  
20 *amended to read:*

21 19876.5. State employees in state bargaining units 1, 4,  
22 15, 18, and 20 who suffer a job-related injury or illness and  
23 become eligible for vocational rehabilitation under  
24 Section 139.5 of the Labor Code on or after January 1,  
25 1993, shall first be subject to an evaluation to determine  
26 what type of state employment can be performed. The  
27 evaluation shall include vocational rehabilitation when  
28 deemed appropriate, based on a medical evaluation and  
29 previous experience. Disability benefits shall be  
30 contingent on the employee's agreement to cooperate  
31 and participate in a reasonable and appropriate  
32 vocational rehabilitation plan necessary to continue state  
33 employment. *This section shall not apply to any*  
34 *job-related or job-incurred injury or illness that occurs on*  
35 *or after January 1, 2000.*

36 *SEC. 11. Section 20309.5 is added to the Government*  
37 *Code, to read:*

38 20309.5. (a) Any person who is a member of the  
39 Defined Benefit Program of the State Teachers'  
40 Retirement Plan and who subsequently became

1 employed, on or after July 1, 1991, and who continues to  
2 be employed by the state to perform service that requires  
3 membership in the Public Employees' Retirement  
4 System under Section 21071 and who meets the  
5 requirements of subdivision (b) of Section 22508.6 of the  
6 Education Code may elect to have his or her state service  
7 subject to coverage by the Defined Benefit Program of  
8 the State Teacher's Retirement Plan and excluded from  
9 coverage by the Public Employees' Retirement System.

10 (b) Upon an election being made pursuant to  
11 subdivision (a), the Public Employees' Retirement  
12 System shall transfer to the Teachers' Retirement Fund  
13 an amount equal to the actuarial accrued liability of the  
14 system for the service rendered by the person making the  
15 election on or after July 1, 1991, to the date of the election,  
16 inclusive. The actuarial accrued liability shall be  
17 calculated based on the actuarial assumptions of the  
18 system for the most recently completed actuarial  
19 valuation as of the date of the election.

20 SEC. 12. Section 20395 of the Government Code is  
21 amended to read:

22 20395. "State peace officer/firefighter member"  
23 means all members who are full-time permanent  
24 employees represented in Corrections Unit No. 6,  
25 Protective Services and Public Safety Unit No. 7, and  
26 Firefighters Unit No. 8 and are employed in class titles  
27 that are designated as peace officer as defined in Chapter  
28 4.5 (commencing with Section 830) of Title 3 of Part 2 of  
29 the Penal Code or are firefighters whose principal duties  
30 consist of active firefighting/fire suppression.

31 A member who is employed in a position that is  
32 reclassified from state miscellaneous to state peace  
33 officer/firefighter pursuant to this section, may make an  
34 irrevocable election in writing to remain subject to the  
35 miscellaneous service retirement benefit and the normal  
36 rate of contribution by filing a notice of the election with  
37 the board within 90 days of notification by the board. A  
38 member who so elects shall be subject to the reduced  
39 benefit factors specified in Section 21353 or 21354.1, as

1 applicable, only for service also included in the federal  
2 system.

3 ~~Notwithstanding any other provision of law, security~~  
4 ~~officers employed by the Department of Justice are not~~  
5 ~~state peace officer/firefighter members, but are, for all~~  
6 ~~purposes, state miscellaneous members.~~

7 SEC. 13. Section 20405.1 of the Government Code is  
8 amended to read:

9 20405.1. Notwithstanding Section 20405, this section  
10 shall apply to state employees in ~~State Bargaining Unit 16~~  
11 *state bargaining units that have agreed to these*  
12 *provisions in a memorandum of understanding between*  
13 *the state employer and the recognized employee*  
14 *organization, as defined in Section 3513, state employees*  
15 *who are excluded from the definition of “state employee”*  
16 *by subdivision (c) of Section 3513, and officers or*  
17 *employees of the executive branch of state government*  
18 *who are not members of the civil service.*

19 (a) On and after the effective date of this section, state  
20 safety members shall also include officers and employees  
21 whose classifications or positions are found to meet the  
22 state safety criteria prescribed in Section 19816.20,  
23 provided the Department of Personnel Administration  
24 agrees to their inclusion. ~~The~~ *For employees covered by*  
25 *a collective bargaining agreement, the effective date of*  
26 *safety membership shall be the date on which the*  
27 *department and the employees’ exclusive representative*  
28 *reach agreement by memorandum of understanding*  
29 *pursuant to Section 3517.5. For employees not covered by*  
30 *a collective bargaining agreement, the Department of*  
31 *Personnel Administration shall determine the effective*  
32 *date of safety membership.*

33 (b) The department shall notify the board as new  
34 classes or positions become eligible for state safety  
35 membership, as specified in subdivision (a), and specify  
36 how service prior to the effective date shall be credited.

37 (c) ~~Notwithstanding Section 7550.5, the~~ *The*  
38 department shall prepare and submit to the Legislature  
39 an annual report that contains the classes or positions that



1 are eligible for state safety membership under this  
2 section.

3 (d) Any person designated as a state safety member  
4 pursuant to this section may elect, within 90 days of  
5 notification by the board, to remain subject to the  
6 miscellaneous or industrial service retirement benefit  
7 and contribution rate by filing an irrevocable election  
8 with the board. A member who so elects shall be subject  
9 to the reduced benefit factors specified in Section 21076,  
10 21353, or 21354.1, as applicable, only for service also  
11 included in the federal system.

12 *SEC. 14. Section 20407.5 is added to the Government*  
13 *Code, to read:*

14 *20407.5. (a) Notwithstanding Section 20407, any*  
15 *person designated as a state safety member pursuant to*  
16 *Section 20407 who elected to remain subject to the*  
17 *miscellaneous service retirement benefit and*  
18 *contribution rate as provided in that section may elect*  
19 *instead to be subject to the state safety service retirement*  
20 *benefit and contribution rate.*

21 *(b) This section shall be applicable to those officers*  
22 *and employees of the State Department of Mental Health*  
23 *described in Section 20407 who are represented by State*  
24 *Bargaining Unit 18 and who became safety members*  
25 *effective January 1, 1998, when the Napa State Hospital*  
26 *and the Metropolitan State Hospital were designated as*  
27 *forensic facilities.*

28 *(c) This section shall also be applicable to any member*  
29 *who is excluded from the definition of state employee in*  
30 *subdivision (c) of Section 3513 and who is directly*  
31 *associated with employees represented by State*  
32 *Bargaining Unit 18.*

33 *(d) The election provided under this section shall be*  
34 *filed with the board by the member within 90 days after*  
35 *notification by the board that the member has the right*  
36 *to elect to be subject to the state safety member service*  
37 *retirement formula and contribution rates. If the election*  
38 *is not made by the member, he or she shall remain subject*  
39 *to the miscellaneous service retirement benefit and*  
40 *contribution rate.*

1     *SEC. 15. Section 21159 of the Government Code is*  
2     *amended to read:*

3     21159. (a) Notwithstanding any other provision of  
4     law, a state member shall not be retired for industrial  
5     disability for an illness or injury that occurs on or after  
6     January 1, 1993, unless the member is incapacitated for  
7     the performance of duty in any employment with the  
8     state employer and the disability is of permanent or  
9     extended and uncertain duration, as determined by the  
10    Department of Personnel Administration. This section  
11    shall only apply to state safety, state industrial, and state  
12    miscellaneous members employed in any state  
13    bargaining units for which a memorandum of  
14    understanding has been agreed to by the state employer  
15    and the recognized employee organization to become  
16    subject to this section. The Director of the Department  
17    of Personnel Administration may adopt rules regarding  
18    job placement and other related activities necessary for  
19    the administration of this section and Section 21195.

20    (b) A state member who, because of the enactment of  
21    this section is no longer eligible to retire for industrial  
22    disability and accepts alternate employment with the  
23    state in which the compensation is less than that received  
24    in the position held at the time of the illness or injury,  
25    shall, upon certification of the Department of Personnel  
26    Administration to the board, become entitled to benefits  
27    under the partial disability retirement program set forth  
28    in Section 21160.

29    (c) The employee shall have the right of appeal to the  
30    Department of Personnel Administration regarding: (1)  
31    the requirement to participate or (2) the exclusion from  
32    participating in the program described in this section and  
33    Section 21160.

34    (d) For all other disputes relative to this section and  
35    Section 21160, the employee shall seek administrative  
36    remedy from his or her appointing power through the  
37    departmental complaint process.

38    (e) The appointing power of the affected employee  
39    shall reimburse the Department of Personnel

1 Administration for any costs associated with the  
2 administration of this provision.

3 *(f) This section shall not apply to any job-related or*  
4 *job-incurred illness or injury that occurs on or after*  
5 *January 1, 2000.*

6 *SEC. 16. Section 21160 of the Government Code is*  
7 *amended to read:*

8 21160. (a) Any state member who is subject to  
9 Section 21159 and does not qualify for industrial disability  
10 retirement under this part, or is reinstated from industrial  
11 disability retirement pursuant to Section 21195, and  
12 accepts another job in state service, shall be paid a partial  
13 disability retirement program benefit payment from this  
14 system in an amount, to be calculated by the Department  
15 of Personnel Administration and certified to the board,  
16 that, when added to the salary earned by the employee  
17 in the current state position, would be equal to the state  
18 salary earned by the member at the time of becoming  
19 unable to perform the duties of his or her previous  
20 position. This supplemental payment shall not result in  
21 the member being deemed to be retired.

22 (b) The partial disability retirement program benefit  
23 payments made under this section shall be paid for by the  
24 state employer in the same manner as all other state  
25 retirement benefits are funded.

26 *(c) This section shall not apply to any job-related or*  
27 *job-incurred illness or injury that occurs on or after*  
28 *January 1, 2000.*

29 *SEC. 17. Section 21161 of the Government Code is*  
30 *amended to read:*

31 21161. (a) A partial disability retirement program is  
32 established by Section 21160 for state employees subject  
33 to Section 21159. The benefits paid under this program  
34 shall be paid pursuant to Sections 21159 and 21160 and  
35 shall not be considered compensation for purposes of  
36 Section 20630.

37 *(b) This section shall not apply to any job-related or*  
38 *job-incurred illness or injury that occurs on or after*  
39 *January 1, 2000.*

1     *SEC. 18. Section 21195 of the Government Code is*  
2     *amended to read:*

3     21195. (a) Notwithstanding any other section in  
4     Article 6 (commencing with Section 21150) or in this  
5     article, the Department of Personnel Administration may  
6     reinstate a person who has retired for industrial disability  
7     pursuant to Section 21410, within 12 months after the  
8     effective date of retirement, if it has identified an  
9     available position with duties that the employee is able to  
10    perform. Upon reinstatement, the person shall become  
11    entitled to benefits under the partial disability retirement  
12    program pursuant to Section 21160.

13    (b) *This section shall not apply to any job-related or*  
14    *job-incurred illness or injury that occurs on or after*  
15    *January 1, 2000.*

16    *SEC. 19. Section 22754.2 of the Government Code, as*  
17    *added by Chapter 91 of the Statutes of 1998, is repealed.*

18    ~~22754.2. As used in this part the following definitions,~~  
19    ~~unless the context otherwise requires, shall govern the~~  
20    ~~interpretation of terms:~~

21    ~~(a) "Board" means the Board of Administration of the~~  
22    ~~Public Employees' Retirement System.~~

23    ~~(b) "Employee" means:~~

24    ~~(1) Any officer or employee of the State of California~~  
25    ~~or of any agency, department, authority, or~~  
26    ~~instrumentality of the state including the University of~~  
27    ~~California, or any officer or employee who is a local or~~  
28    ~~school member of the Public Employees' Retirement~~  
29    ~~System employed by a contracting agency that has~~  
30    ~~elected to be or otherwise has become subject to this part,~~  
31    ~~or who is a member or retirant of the State Teachers'~~  
32    ~~Retirement System employed by an employer who has~~  
33    ~~elected to become subject to this part, or who is an~~  
34    ~~employee or annuitant of a special district or county~~  
35    ~~subject to the County Employees Retirement Law of 1937~~  
36    ~~(Chapter 3 (commencing with Section 31450) of Part 3 of~~  
37    ~~Division 4 of Title 3) that has elected to become subject~~  
38    ~~to this part, or who is an employee or annuitant of a~~  
39    ~~special district, as defined in subdivision (i), that has~~  
40    ~~elected to become subject to this part, except persons~~

1 employed on an intermittent, irregular or less than  
2 half time basis, or employees similarly situated, or  
3 employees in respect to whom contributions by the state  
4 for any type of plan or program offering prepaid hospital  
5 and medical care are otherwise authorized by law.

6 (2) Any officer or employee who participates in the  
7 retirement system of a contracting agency as defined in  
8 paragraph (2) of subdivision (g) that has elected to  
9 become subject to this part, except persons employed less  
10 than half time or who are otherwise determined to be  
11 ineligible.

12 (3) Any annuitant of the Public Employees'  
13 Retirement System employed by a contracting agency as  
14 defined in subdivision (g) that has elected to become  
15 subject to this part who is a person retired under Section  
16 21228.

17 (4) Notwithstanding paragraph (1), "eligible  
18 employee" of the State of California, as it applies to state  
19 employees in State Bargaining Unit 19, means (A) a  
20 permanent employee appointed half time or more; (B)  
21 an employee who is a limited term or temporary  
22 authorization appointee who continues coverage based  
23 on prior continuous permanent status; (C) an employee  
24 who is in a half time or more limited term appointment  
25 shall qualify after working six consecutive months; and  
26 (D) an employee appointed half time or more to a  
27 temporary appointment in lieu of a permanent  
28 appointment; and (E) a permanent intermittent  
29 employee who works a minimum of 480 hours in a  
30 six-month control period. All other limited term,  
31 nonstatus employees as defined by the Department of  
32 Personnel Administration and temporary authorization  
33 employees are not eligible.

34 (e) "Carrier" means a private insurance company  
35 holding a valid outstanding certificate of authority from  
36 the Insurance Commissioner of the state, a medical  
37 society or other medical group, a nonprofit hospital  
38 service plan qualifying under Chapter 11A (commencing  
39 with Section 11491) of Part 2 of Division 2 of the Insurance  
40 Code, or nonprofit membership corporation lawfully

~~operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.~~

~~(d) “Health benefits plan” means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.~~

~~(e) “Annuitant” means:~~

~~(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.~~

~~(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21571 or similar provisions of any other state retirement system.~~

~~(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.~~

~~(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.~~

~~(f) “Family member” means an employee’s or annuitant’s spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation,~~

~~prescribe age limits and other conditions and limitations pertaining to unmarried children.~~

~~(g) “Contracting agency” means:~~

~~(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.~~

~~(2) Any public body or agency of, or within California not covered by the Public Employees’ Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), which provides a retirement system for its employees funded wholly or in part by public funds.~~

~~(h) “Employer” means the state, any contracting agency employing an employee, and any agency which has elected to become subject to this part pursuant to Section 22856.~~

~~(i) “Special district” means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.~~

~~SEC. 20. Section 22825.01 of the Government Code is amended to read:~~

~~22825.01. (a) As used in this section, the following definitions shall apply:~~

~~(1) A “rural area” means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants who live in the area.~~

~~(2) “Coinsurance” means the provision of a medical plan design in which the plan or insurer and state employee or annuitant share the cost of hospital or medical expenses at a specified ratio.~~

~~(3) A “deductible” means the annual amount of out-of-pocket medical expenses that state employees or~~



1 annuitants must pay before the insurer or self-funded  
2 plan begins paying for expenses.

3 (4) “Department” means the Department of  
4 Personnel Administration.

5 (5) ~~“Fund”~~—“Program” means the Rural Healthcare  
6 Health Care Equity Trust Fund Program.

7 (b) (1) The Rural Health Care Equity Trust Fund  
8 Program is hereby established ~~in the State Treasury~~ for  
9 the purpose of funding the subsidization and  
10 reimbursement of premium costs, deductibles,  
11 coinsurance, and other out-of-pocket health care costs,  
12 which would otherwise be covered if the state employee  
13 or annuitant was enrolled in a board-approved health  
14 maintenance organization plan, paid by employees and  
15 annuitants living in rural areas, as authorized by this  
16 section. The fund program shall be administered by the  
17 department or by a third-party administrator approved  
18 by the department in a manner consistent with all  
19 applicable state and federal laws. ~~Interest earned from~~  
20 ~~the fund shall be used to offset administrative costs.~~ The  
21 board shall determine the rural area for each subsequent  
22 fiscal year at the same meeting when the board approves  
23 premiums for health maintenance organizations.

24 (2) Separate accounts shall be maintained within the  
25 fund program for (A) employees, as defined in  
26 subdivision (c) of Section 3513; (B) excluded employees,  
27 as defined in subdivision (b) of Section 3527; and (C)  
28 annuitants as defined in subdivision (e) of Section 22754.

29 (c) Moneys in the Rural Health Care Equity Trust  
30 Fund Program shall be allocated to the separate accounts  
31 as follows:

32 (1) As the employer’s contribution with respect to  
33 each employee, as defined in subdivision (c) of Section  
34 3513, who lives in a rural area and who is otherwise  
35 eligible, an amount to be determined through the  
36 collective bargaining process.

37 (2) As the employer’s contribution with respect to  
38 each excluded employee, as defined in subdivision (b) of  
39 Section 3527, who lives in a rural area and who is  
40 otherwise eligible, an amount equal to, but not to exceed,

1 the amount given to eligible state employees, as defined  
2 in subdivision (c) of Section 3513, who live in a rural area.

3 (3) As the employer's contribution with respect to  
4 each annuitant, as defined in subdivision (e) of Section  
5 22754, who lives in a rural area, is not a Medicare  
6 participant, and who is otherwise eligible, an amount not  
7 to exceed five hundred dollars (\$500) per year.

8 (4) As to the state's contribution with respect to each  
9 state annuitant, as defined in subdivision (e) of Section  
10 22754 who lives in a rural area, participates in a  
11 board-approved, Medicare-coordinated health plan,  
12 participates in a board-approved health plan, and is  
13 otherwise eligible, an amount equal to the Medicare Part  
14 B premiums incurred by the annuitant, not to exceed  
15 seventy-five dollars (\$75) per month. The state shall not  
16 reimburse for penalty amounts.

17 (5) As to an employee who enters state service or  
18 leaves state service during a fiscal year, contributions for  
19 the employee shall be made on a pro rata basis. A similar  
20 computation shall be used for anyone entering or leaving  
21 the bargaining unit, including a person who enters the  
22 bargaining unit by promotion in mid-fiscal year.

23 (d) Each fund of the State Treasury, other than the  
24 General Fund, shall reimburse the General Fund for any  
25 sums allocated pursuant to subdivision (c) for employees  
26 ~~and annuitants whose compensation or annuities are~~ is  
27 paid from that fund.

28 ~~(e) That reimbursement shall be accomplished using~~  
29 ~~the following methodology:~~

30 (1) *On or before December 1 of each year, the*  
31 *Department of Personnel Administration shall provide a*  
32 *listing of active state employees who participated in the*  
33 *Rural Area Health Subsidy Program in the immediately*  
34 *preceding fiscal year to each employing department.*

35 (2) *On or before January 15 of each year, every*  
36 *department that employed an active state employee*  
37 *identified by the Department of Personnel*  
38 *Administration as a participant in the Rural Area Health*  
39 *Subsidy Program shall provide the Department of*  
40 *Personnel Administration with a listing of the funds used*

1 to pay each employee's salary, along with the proportion  
2 of each active state employee's salary attributable to each  
3 fund.

4 (3) Using the information provided by the employing  
5 departments, the Department of Personnel  
6 Administration shall compile a listing of Rural Area  
7 Health Subsidy payments attributable to each fund. On  
8 or before February 15 of each year, the Department of  
9 Personnel Administration shall transmit this list to the  
10 Department of Finance.

11 (4) The Department of Finance shall certify to the  
12 Controller the amount to be transferred from the  
13 unencumbered balance of each fund to the General  
14 Fund.

15 (5) The Controller shall transfer to the General Fund  
16 from the unencumbered fund balance of each impacted  
17 fund the amount specified by the Department of  
18 Finance.

19 (6) To ensure the equitable allocation of costs, the  
20 Director of the Department of Personnel Administration  
21 or the Director of Finance may require an audit of  
22 departmental reports.

23 (e) For any sums allocated pursuant to subdivision (c)  
24 for annuitants, funds, other than the General Fund, shall  
25 be charged a fair share of the state's contribution in  
26 accordance with the provisions of Article 2 (commencing  
27 with Section 11270) of Chapter 3 of Part 1 of Division 3 of  
28 Title 2. On or before July 31 of each year, the Department  
29 of Personnel Administration shall provide the  
30 Department of Finance with the total costs allocated  
31 pursuant to subdivision (c) for annuitants in the  
32 immediately preceding fiscal year. The reported costs  
33 shall not include expenses that have been incurred but  
34 not claimed as of July 31.

35 (f) Notwithstanding any other provision of law and  
36 subject to the availability of funds, moneys within the  
37 Rural Health Care Equity ~~Trust-Fund~~ Program shall be  
38 disbursed for the benefit of an employee who lives in a  
39 rural area and who is otherwise eligible. The  
40 disbursements shall, where there is no board-approved

1 health maintenance organization plan available in an  
 2 area that is open for enrollment for the employee, (1)  
 3 subsidize the preferred provider plan premiums for the  
 4 employee, by an amount equal to the difference between  
 5 the weighted average of board-approved health  
 6 maintenance organization premiums and the lowest  
 7 board-approved preferred provider plan premium  
 8 available under this part and (2) reimburse the employee  
 9 for a portion or all of his or her incurred deductibles,  
 10 coinsurances, and other out-of-pocket health-related  
 11 expenses, which would otherwise be covered if the  
 12 employee was enrolled in a board-approved health  
 13 maintenance organization plan.

14 These subsidies and reimbursements shall be provided  
 15 according to a plan determined by the department,  
 16 which may include, but is not limited to, a supplemental  
 17 insurance plan, a medical reimbursement account, or a  
 18 medical spending account plan.

19 ~~(f)~~

20 (g) Notwithstanding any other provision of law and  
 21 subject to the availability of funds, moneys within the  
 22 Rural Health Care Equity ~~Trust Fund~~ *Program* shall be  
 23 disbursed for the benefit of eligible annuitants, as defined  
 24 in subdivision (e) of Section 22754, who live in rural areas  
 25 and who are otherwise eligible. The disbursements shall,  
 26 where there is not board-approved health maintenance  
 27 organization plan available and open to enrollment by  
 28 the annuitant, either ~~(A)~~ (1) reimburse the annuitant if  
 29 he or she is not a Medicare participant, for some or all of  
 30 his or her deductibles, not to exceed five hundred dollars  
 31 (\$500) per fiscal year, or ~~(B)~~ (2) reimburse Medicare  
 32 Part B premiums incurred by the annuitant, not to exceed  
 33 seventy-five dollars (\$75) per month, exclusive of  
 34 penalties. These reimbursements shall be provided by the  
 35 department.

36 The state shall not reimburse for penalty amounts.

37 ~~(g)~~

38 (h) Any moneys remaining in any account of the ~~fund~~  
 39 *program* at the end of any fiscal year shall remain in the  
 40 account for use in subsequent fiscal years until the

1 account is terminated. Moneys remaining in any account  
2 of the ~~fund~~ *program* upon termination, after payment of  
3 all outstanding expenses and claims incurred prior to the  
4 date of termination, shall be deposited in the General  
5 Fund.

6 ~~(h)~~

7 (i) The Legislature finds and declares that the Rural  
8 Health Care Equity ~~Trust Fund Program~~ is a ~~trust fund~~  
9 ~~held established~~ for the exclusive benefit of employees,  
10 annuitants, and family members.

11 ~~(h)~~

12 (j) This section shall cease to be operative on January  
13 1, 2005, or on such earlier date as the board makes a formal  
14 determination that HMOs are no longer the most  
15 cost-effective health care plans offered by the board.

16 *SEC. 21. Section 10295 of the Public Contract Code is*  
17 *amended to read:*

18 10295. (a) All contracts entered into by any state  
19 agency for ~~(a) (1) the hiring or purchase of equipment,~~  
20 ~~supplies, materials, acquisition of goods~~ or elementary  
21 school textbooks, ~~(b) (2) services, whether or not the~~  
22 ~~services involve the furnishing or use of equipment,~~  
23 ~~materials or supplies~~ goods or are performed by an  
24 independent contractor, ~~(c) (3) the construction,~~  
25 alteration, improvement, repair, or maintenance of  
26 property, real or personal, or ~~(d) (4) the performance of~~  
27 work or services by the state agency for or in cooperation  
28 with any person, or public body, are void unless and until  
29 approved by the department. Every ~~such~~ contract shall  
30 be transmitted with all papers, estimates, and  
31 recommendations concerning it to the department and,  
32 if approved by the department, shall be effective from  
33 the date of the approval. ~~This~~

34 (b) *This* section applies to any state agency that by  
35 general or specific statute is expressly or impliedly  
36 authorized to enter into transactions referred to in this  
37 section. ~~This~~

38 (c) *This* section does not apply to ~~any~~ the following:

39 (1) Any transaction entered into by the Trustees of the  
40 California State University or by a department under the

1 State Contract Act or the California State University  
2 Contract Law, ~~any~~.

3 (2) Any contract of a type specifically mentioned and  
4 authorized to be entered into by the Department of  
5 Transportation under Section 14035 or 14035.5 of the  
6 Government Code, Sections 99316 to 99319, inclusive, of  
7 the Public Utilities Code, or the Streets and Highways  
8 Code, ~~any~~.

9 (3) Any contract entered into by the Department of  
10 Transportation that is not funded by money derived by  
11 state tax sources but, rather, is funded by money derived  
12 from federal or local tax sources, ~~any~~.

13 (4) Any contract entered into by the Department of  
14 Personnel Administration for state ~~employees in state~~  
15 ~~bargaining units that have agreed to this section in a~~  
16 ~~memorandum of understanding for~~ employee benefits,  
17 occupational health and safety, training services, or  
18 combination thereof ~~any~~.

19 (5) Any contract let by the Legislature, ~~or any~~.

20 (6) Any contract entered into under the authority of  
21 Chapter 4 (commencing with Section 11770) of Part 3 of  
22 Division 2 of the Insurance Code.

23 *SEC. 22. The Legislature hereby declares its intent*  
24 *that Sections 19876.5, 21159, 21160, 21161, and 21195 of the*  
25 *Government Code, as amended by this act, shall be given*  
26 *retroactive effect to January 1, 2000.*

27 *SEC. 23. The sum of sixty-five million four hundred*  
28 *fourteen thousand two hundred eighty-eight dollars*  
29 *(\$65,414,288) is hereby appropriated as follows:*

30 *(a) Five million dollars (\$5,000,000) from the General*  
31 *Fund to the Controller for allocation to the Work and*  
32 *Family Fund, a continuously appropriated fund, for*  
33 *expenditure by the Department of Personnel*  
34 *Administration for the purposes of establishing and*  
35 *maintaining work and family programs for state*  
36 *employees. These programs may include, but are not*  
37 *limited to, financial assistance to aid in the development*  
38 *of child care centers administered by either nonprofit*  
39 *corporations formed by state employees or child care*  
40 *providers, or to provide grants, subsidies, or both grants*

1 and subsidies for child care and elder care. Other  
2 programs may include enhancement or supplementation  
3 of existing employee assistance program services and  
4 other work and family programs.

5 (b) Forty-seven million six hundred thousand dollars  
6 (\$47,600,000) from unallocated special funds for  
7 expenditure in the 1999–2000 fiscal year in augmentation  
8 and for the purposes of state employee compensation as  
9 provided in Item 9800-001-0494 of Section 2.00 of the  
10 Budget Act of 1999 (Chapter 50, Statutes of 1999).

11 (c) Twelve million six hundred thirty-nine thousand  
12 two hundred eighty-eight dollars (\$12,639,288) from the  
13 General Fund to the Department of Personnel  
14 Administration for the purpose of funding the Rural Area  
15 Health Subsidy Program, as established by Section  
16 22825.01 of the Government Code, as added by Chapter  
17 743 of the Statutes of 1999.

18 The funds appropriated pursuant to this subdivision  
19 shall be used for the subsidization and reimbursement of  
20 premium costs, deductibles, coinsurance, and other  
21 out-of-pocket health care costs of state employees living  
22 in rural areas. The funds appropriated by this subdivision  
23 shall be available for expenditure until January 1, 2005.

24 (d) The sum of one hundred seventy-five thousand  
25 dollars (\$175,000) from the General Fund in  
26 augmentation of Item 8380-001-0001 of Section 2.00 of the  
27 Budget Act of 1999 (Chapter 50 of the Statutes of 1999).  
28 The funds appropriated pursuant to this subdivision shall  
29 be used to contract with a third-party administrator to  
30 provide recordkeeping services for the Rural Area Health  
31 Subsidy Program, as established by Section 22825.01 of the  
32 Government Code, as added by Chapter 743 of the  
33 Statutes of 1999.

34 SEC. 24. This act is an urgency statute necessary for  
35 the immediate preservation of the public peace, health,  
36 or safety within the meaning of Article IV of the  
37 Constitution and shall go into immediate effect. The facts  
38 constituting the necessity are:



1     *In order that the provisions of this act relating to state*  
2     *employees may become effective at the earliest possible*  
3     *time, it is necessary that this act go into immediate effect.*

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